



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

JUN 17 2003

Benjamin L. Ginsberg, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037-1350

RE: MUR 4953
National Republican Congressional
Committee and Christopher J. Ward,
as treasurer

Dear Mr. Ginsberg:

On December 15, 1999, the Federal Election Commission notified your clients, the National Republican Congressional Committee and its treasurer, Donna M. Anderson, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your clients at that time.

Upon further review of the allegations contained in the complaint, and information provided by your clients, the Commission, on June 10, 2003, found that there is reason to believe that the National Republican Congressional Committee and its treasurer, Christopher J. Ward, violated 2 U.S.C. §§ 441a(f) and 441b, provisions of the Act, and 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c) and 106.5(g)(1)(i), provisions of the Commission's Regulations. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that they believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath. All responses to the enclosed Subpoena to Produce Documents and Order to Submit Written Answers must be submitted to the General Counsel's Office within 30 days of your receipt of this letter. Any additional materials or statements you wish to submit should accompany the response to the subpoena and order. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter.

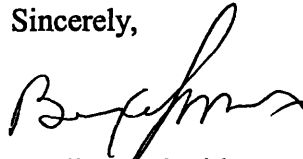
Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that your clients wish the investigation to be made public.

If you have any questions, please contact Marianne Abely, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Bradley A. Smith
Vice Chairman

Enclosures:

Subpoena and Order

Factual and Legal Analysis

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of

MUR 4953

SUBPOENA TO PRODUCE DOCUMENTS
ORDER TO SUBMIT WRITTEN ANSWERS

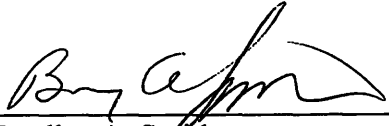
**TO: National Republican Congressional Committee
Christopher J. Ward, Treasurer
c/o Benjamin L. Ginsberg, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037-1350**

Pursuant to 2 U.S.C. § 437d(a)(1) and (3), and in furtherance of its investigation in the above-captioned matter, the Federal Election Commission hereby orders you to submit written answers to the questions attached to this Order and subpoenas you to produce the documents requested on the attachment to this Subpoena. Legible copies which, where applicable, show both sides of the documents may be substituted for originals.

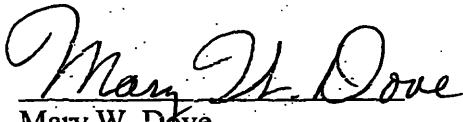
Such answers must be submitted under oath and must be forwarded to the Office of the General Counsel, Federal Election Commission, 999 E Street, N.W., Washington, D.C. 20463, along with the requested documents within 30 days of receipt of this Order and Subpoena.

WHEREFORE, the Chair of the Federal Election Commission has hereunto set her hand
in Washington, D.C. on this 16th day of June, 2003.

For the Commission,


Bradley A. Smith
Vice Chairman

ATTEST:


Mary W. Dove
Secretary to the Commission

Attachments:
Instructions and Definitions
Questions and Document Requests

INSTRUCTIONS

In answering this Subpoena to Produce Documents and Order to Submit Written Answers, furnish all documents and other information, however obtained, including hearsay, that is in your possession, custody or control.

Each answer is to be given separately and independently, and unless specifically stated in the particular discovery request, no answer shall be given solely by reference either to another answer or to an exhibit attached to your response.

The response to each interrogatory propounded herein shall set forth separately the identification of each person capable of furnishing testimony concerning the response given, denoting separately those individuals who provided informational, documentary, or other input, and those who assisted in drafting the interrogatory response.

If you cannot answer the following interrogatories in full after exercising due diligence to secure the full information to do so, answer to the extent possible and indicate your inability to answer the remainder, stating whatever information or knowledge you have concerning the unanswered portion and detailing what you did in attempting to secure the unknown information.

Should you claim a privilege with respect to any documents, communications, or other items about which information is requested by any of the following interrogatories and requests for production of documents, describe such items in sufficient detail to provide justification for the claim. Each claim of privilege must specify in detail all the grounds on which it rests.

Unless otherwise indicated, the discovery request shall refer to the time period from January 1, 1999 through January 1, 2000.

The following interrogatories and requests for production of documents are continuing in nature so as to require you to file supplementary responses or amendments during the course of this investigation if you obtain further or different information prior to or during the pendency of this matter. Include in any supplemental answers the date upon which and the manner in which such further or different information came to your attention.

DEFINITIONS

For the purpose of these discovery requests, including the instructions thereto, the terms listed below are defined as follows:

The "National Republican Congressional Committee" ("NRCC") shall mean the political committee of that name, including, its federal accounts (FEC ID numbers C00075820 and C00002931); its non-federal accounts; its officers and staff, whether paid or unpaid; board members; agents; representatives; volunteers; and attorneys thereof.

1
2 The "U.S. Family Network" ("USFN") shall mean the organization of that name,
3 including, all officers; board members; staff, whether paid or unpaid; agents; volunteers and
4 attorneys thereof.

5
6 "Americans for Economic Growth" ("AEG") shall mean the organization of that name,
7 including, all officers; board members; staff, whether paid or unpaid; agents; volunteers and
8 attorneys thereof.

9
10 "Persons" shall be deemed to include both singular and plural, and shall mean any natural
11 person, partnership, committee, association, corporation, or any other type of organization or
12 entity.

13
14 "Document" shall mean the original and all non-identical copies, including drafts, of all
15 papers and records of every type in your possession, custody or control, or known by you to exist.
16 The term document includes, but is not limited to books, letters, e-mails, contracts, notes, diaries,
17 log sheets, records of telephone communications, transcripts, vouchers, accounting statements,
18 ledgers, checks, money orders or other commercial paper, telegrams, telexes, pamphlets,
19 circulars, leaflets, reports, memoranda, correspondence, surveys, tabulations, audio and video
20 recordings, drawings, photographs, graphs, charts, diagrams, lists, computer print-outs, and all
21 other writings and other data compilations from which information can be obtained. The term
22 documents also includes electronic copies and all temporary and permanent storage devices
23 under your control, including but not limited to, hard drives, servers, cd roms, discs, jazz discs,
24 zip discs, tape storage and tape back-up systems, cd and optical back-up systems, electronic logs,
25 e-mail and e-mail back-up systems. If a document is maintained on or in a magnetic or electronic
26 medium (for example, but not limited to, computer tape, diskette, or CD-ROM), provide both
27 "hard" (i.e., paper) and "soft" (i.e., in the magnetic or electronic medium) copies, including
28 drafts, and identify the name (e.g., WordPerfect, Microsoft Word for Windows, Pro Write, etc.)
29 and version numbers by which the documents will be most easily retrieved.

30
31 "Identify" with respect to a document shall mean state the nature or type of document
32 (e.g., letter, memorandum), the date, if any, appearing thereon, the date on which the document
33 was prepared, the title of the document, the general subject matter of the document, the location
34 of the document, the number of pages comprising the document, the author of the document, and
35 all recipients of the document (including all persons, other than the primary recipient of the
36 document, who received copies).

37
38 "Identify" with respect to a person shall mean state the full name, the most recent
39 business and residential addresses, most recent telephone numbers, the present occupation or
40 position of such person, and the nature of the connection or association that person has to any
41 party in this proceeding. Additionally, where the person to be identified is or was an officer,
42 partner, supervisor, employee, agent, co-worker, volunteer, subordinate, staff, or attorney of the
43 NRCC or was acting on its behalf in any capacity between January 1, 1999 and January 1, 2000,

1 "identify" shall mean state the person's title and responsibilities, the individual to whom the
2 person reported, and whether the person is still an employee or agent of the NRCC. "Identify"
3 shall further encompass stating the NRCC's telephone carrier(s) (both land-line and cellular)
4 during the relevant time period, as well as, stating that person's fax number and telephone
5 number(s) with extension(s). If the person is no longer an employee or agent of the NRCC,
6 "identify" shall further mean state the beginning and ending dates of the person's employment or
7 agency. If the person began their employment with the NRCC between January 1, 1999 and
8 January 1, 2000, "identify" shall further mean state where the person was employed immediately
9 prior to being employed by the NRCC, and the beginning date of their employment by the
10 NRCC.

11
12 If the person to be identified is not a natural person, provide the legal and trade names,
13 the address and telephone number, and the full names of both the chief executive officer or its
14 equivalent and the agent designated to receive service of process for such person.

15
16 "And" as well as "or" shall be construed disjunctively or conjunctively as necessary to
17 bring within the scope of these interrogatories and request for the production of documents any
18 documents and materials which may otherwise be construed to be out of their scope.
19

QUESTIONS AND DOCUMENT REQUESTS

1. Produce the drafts and "as produced" versions of all advertisements or other public communications to the general public sponsored by the NRCC in the fall of 1999 that related to the issue of Social Security, parts of which advertising program may have been referred to as "Stop the Raid." For each advertisement or other communication:

a. State the total amount of money expended by the NRCC on each advertisement or other public communication and the account(s) from which these disbursements were made;

b. State in which congressional districts, on what date(s), and through what medium (e.g. television, radio) each advertisement or other public communication was distributed;

c. Identify the person(s) who, on behalf of the NRCC, authorized each advertisement or other public communication;

d. Identify all vendors who provided services to the NRCC in connection with each such advertisement or other public communication and state the nature of the services provided in connection with each advertisement or other public communication.

2. State whether there was any standard practice and/or formal process followed by the NRCC during the relevant time period relating to the contribution of funds to, transfer of funds to, and/or donation of funds to outside groups and/or third parties, and if the answer is in the affirmative, produce any and all documents that reflect, refer to, or relate to this standard practice or process.

3. Identify the person(s) who solicited or requested that the NRCC donate or transfer of funds to the USFN on or about October 20, 1999, and;

a. Produce any and all documents that reflect, refer to or relate to the solicitation(s) or request(s), including but not limited to, any and all documents that relate to communications the NRCC had with any person(s) regarding the solicitation or request.

4. Identify the person(s) at the NRCC who considered, approved or rejected the solicitation(s) or request(s), and;

a. Produce any and all documents that reflect, refer to or relate to the consideration, approval or rejection of the solicitation or request that the NRCC donate or transfer funds to the USFN on or about October 20, 1999, including but not limited to, any and all documents that relate to communications the NRCC had with any person(s) regarding the consideration, approval or rejection of the solicitation or request that the NRCC donate or transfer funds to the USFN on or about October 20, 1999.

1 5. State whether the NRCC knew prior to, or at the time of, the donation or transfer
2 of funds to the USFN in October 1999 that the USFN intended to transfer any portion of those
3 funds to AEG or any other third party or group. If the answer is in the affirmative:
4

5 a. Identify the person(s) who communicated with the NRCC regarding the USFN's
6 intention to transfer any portion of those funds to AEG or any other third party or group;
7

8 b. Identify the NRCC personnel who were provided with information regarding the
9 USFN's intention to transfer any portion of those funds to AEG or any other third party or group,
10 and;
11

12 c. Produce any and all documents that reflect, refer to, or relate to the USFN's
13 intention to transfer any portion of those funds to AEG or any other third party or group,
14 including but not limited to, any and all documents that relate to communications regarding the
15 USFN's intention to transfer any portion of those funds to AEG or any other third party or group.
16

17 6. State whether the NRCC knew prior to, or at the time of the October 1999 transfer
18 of \$500,000 to the USFN that the AEG intended to sponsor radio advertisements or other public
19 communications on the issue of Social Security. If the answer is in the affirmative:
20

21 a. Identify the NRCC personnel who were in possession of this information, and;
22

23 b. Produce any and all documents that reflect, refer to, or relate to this information,
24 including but not limited to, any and documents related to communications regarding this
25 information.
26

27 7. State whether the NRCC requested that the USFN donate or transfer all or a
28 portion of the funds that the NRCC donated or transferred to the USFN on or about October 20,
29 1999 to AEG for the purpose of sponsoring radio advertisements or other public communications
30 on the issue of Social Security.. If the answer is in the affirmative:
31

32 a. Identify the person(s) at the NRCC who made this request and the person(s) at the
33 USFN and AEG to whom the request was made;
34

35 b. Produce any and all documents that reflect, refer to, or relate to this request,
36 including but not limited to, any and all documents that relate to communications regarding this
37 request.
38

39 8. Describe the NRCC's document retention and destruction policies during the
40 relevant time period and identify the person(s) responsible for ensuring that these policies were
41 followed. If such policies are reflected in documents, produce the documents.
42
43

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3
4 RESPONDENTS: National Republican Congressional MUR: 4953
5 Committee and Christopher J. Ward,
6 as treasurer
7

8 **I. INTRODUCTION**

9 The complaint in this matter alleged violations based on an allocation theory. The
10 Democratic Congressional Campaign Committee ("DCCC") alleged that the National
11 Republican Congressional Committee and Christopher J. Ward, as treasurer¹ ("NRCC"),
12 transferred \$500,000 in non-federal funds to the U.S. Family Network ("USFN") for the purpose
13 of avoiding compliance with the Commission's allocation regulations. Based on all the available
14 information, the Federal Election Commission found reason to believe that the NRCC violated
15 the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations
16 by failing to allocate its donation to the USFN.

17 **II. FACTUAL AND LEGAL ANALYSIS**

18 **A. The Complaint and Response**

19 Citing a *Roll Call* article, the DCCC alleged, *inter alia*, that the NRCC transferred
20 \$500,000 in non-federal funds to the USFN, a non-profit corporation, on October 20, 1999,
21 reportedly "the largest single donation to an outside group" by the NRCC during 1999. Jim
22 VandeHei, *NRCC's \$500,000 Donation Linked to DeLay Advisors*, *Roll Call*, Dec. 6, 1999 at A1
23 ("12/6/99 *Roll Call* article"). The DCCC alleged that the NRCC transferred the money to the

¹ Donna M. Anderson was the treasurer of the National Republican Congressional Committee at the time the respondents were notified of the complaint.

1 outside group so that it could conduct allocable activities “entirely with soft money.” Citing the
2 12/6/99 *Roll Call* article, the DCCC quoted, as support, reported statements of Dan Mattoon,
3 who was then Deputy Chairman of the NRCC, that the NRCC was “disappointed and frustrated
4 that the conservative base was not energized to turn out [voters] for our candidates. So we
5 thought that in 1999 that it made sense that we help these groups” The DCCC asserted that
6 the NRCC donated the funds to the USFN because Ed Buckham, who allegedly solicited them,
7 could be “relied upon” to use the money to promote Republican Congressional candidates. The
8 DCCC quoted language from the 12/6/99 *Roll Call* article, reporting that Dan Mattoon said that,
9 because of its affiliation with Mr. Buckham, the USFN would have “an important impact in the
10 elections, favorably for Republicans.” *Id.*

11 Although it acknowledged its \$500,000 donation to the USFN, *see* discussion *supra*, the
12 NRCC contended that it had no control over how the USFN was going to spend the money but
13 believed that the funds were going to be used in a manner consistent with certain materials
14 provided by the USFN and not for any “electioneering purposes.” These materials, which were
15 enclosed with the NRCC’s response, included: the USFN’s mission statement; a USFN
16 Legislative Report dated August 6, 1999; and several issues of the group’s newsletter, *Today’s*
17 *Family*. According to the NRCC, none of the activities described in those materials falls under
18 the Act.

19 **B. The Applicable Law**

20 To ensure compliance with the Act’s contribution limits and with the prohibition on
21 corporate and labor union contributions, Commission regulations require that political
22 committees that finance activities in connection with both federal and non-federal elections

1 either: 1) establish separate federal and non-federal accounts, with the federal account consisting
2 only of funds subject to the Act's limitations and prohibitions; or 2) establish a single account to
3 finance federal and non-federal activities, which shall receive only contributions subject to the
4 limitations and prohibitions of the Act. 11 C.F.R. § 102.5(a)(1).² Committees that have
5 established separate federal and non-federal accounts must make all disbursements, expenditures,
6 and transfers in connection with any federal election from their federal account. 11 C.F.R.
7 §§ 102.5(a)(1)(i) and 106.5(a)(1). Where a committee has violated section 102.5(a)(1) by
8 disbursing funds from its non-federal account in connection with a federal election, the
9 committee has also violated 2 U.S.C. §§ 441a and 441b(a) if the non-federal account contained
10 excessive and corporate or labor organization funds at the time of the disbursement. *See*
11 MUR 3670 (California Democratic Party) ("CDP"), MUR 3774 (National Republican Senatorial
12 Committee) ("NRSC"), and MUR 4709 (Democratic County Executive Committee of
13 Philadelphia).

14 Party committees with separate federal and non-federal accounts must allocate expenses
15 for certain categories of shared activities between their federal and non-federal accounts. *See*
16 11 C.F.R. §§ 106.5(a) and 106.5(g)(1)(i). House campaign committees of national parties must
17 allocate costs of non-fundraising allocable activities based on the ratio of federal expenditures to
18 total federal and non-federal disbursements made by the committee during the two-year federal
19 election cycle, with a minimum of 65% to be allocated to the federal accounts each year.

20

² Pursuant to BCRA, the Commission promulgated new regulations under which the national party committees are prohibited from soliciting, receiving, directing to another person or spending non-federal funds, that is, funds that are not subject to the limits, prohibitions and reporting requirements of the Act, 11 C.F.R. § 300.10, and the allocation provisions were revised to sunset as to the national party committees as of December 31, 2002. *See* 11 C.F.R. § 102.5(c).

1 11 C.F.R. §§ 106.5(c)(1) and (2). A party committee must pay “the entire amount of an allocable
2 expense from its federal account and [then] transfer funds from its non-federal account to its
3 federal account solely to cover the non-federal share of that allocable expense.” 11 C.F.R.
4 § 106.5(g)(1)(i). Allocable activities include, *inter alia*, the costs of generic voter drive
5 activities. 11 C.F.R. § 106.5(a)(2). “Generic voter drives” are defined as “including voter
6 identification, voter registration, and get-out-the-vote drives, or any other activities that urge the
7 general public to register, vote or support candidates of a particular party or associated with a
8 particular issue, without mentioning a specific candidate.” 11 C.F.R. § 106.5(a)(2)(iv). The
9 Commission has long recognized that get-out-the-vote (“GOTV”) drives have an impact on
10 federal elections. *See Methods of Allocation Between Federal and Non-Federal Accounts;*
11 *Payments; Reporting*, 55 Fed. Reg. 26058, 26065 (June 26, 1990) and Advisory Opinions 1978-
12 10, 1978-28, and 1978-50 (explaining that voter drives have a direct impact on federal elections
13 and should be allocated between federal and non-federal accounts). *But see McConnell v. FEC*,
14 Civ. No. 02-0582, slip op. at 26-37 (D.D.C. May 2, 2003) (Leon, J.) (Judge Leon concluding that
15 such activities “only indirectly” affect federal elections).

16 The Commission also has acknowledged the impact of other political party committee
17 activity on both federal and non-federal elections, specifically, so-called party “issue
18 advertisements.” In Advisory Opinion 1995-25, the Commission concluded that party-financed
19 advertisements that focused on national legislative activity and promoted a national political
20 party should be considered as having been made in connection with both federal and non-federal
21 elections and should be allocated on the same basis as administrative and generic voter drive
22 costs, unless the advertisements qualified as coordinated expenditures. The proposed legislative

1 advertisements at issue in AO 1995-25 did not mention an election and may or may not have
2 referenced federal candidates. The Commission's conclusion in AO 1995-25 was grounded in
3 *Buckley v. Valeo*, 424 U.S. 1 (1976), in which the Supreme Court observed that expenditures
4 made by organizations whose main purpose is the nomination or election of a candidate are, by
5 definition, campaign-related. As further support for its decision, the Commission noted that the
6 stated purpose of the advertisements in AO 1995-25, which was to gain popular support for
7 Republican positions on given legislative measures and to influence the public's positive view of
8 Republicans and their agenda, "encompasses the related goal of electing Republican candidates
9 to Federal office." See MUR 4538 (Alabama Republican Party) (the Commission found
10 probable cause to believe that a state party committee violated 2 U.S.C. §§ 441a(f) and 441b(a)
11 and 11 C.F.R. § 102.5 by failing to allocate funds used for issue advocacy).

12 The Commission has determined in prior enforcement matters that a party committee that
13 gives non-federal funds to a third party with the knowledge that all or part of the funds will be
14 used to conduct allocable activity must allocate and report those expenditures as if the party
15 committee had made those expenditures directly. See MUR 3670 (CDP) and MUR 3774
16 (NRSC). In MUR 3670, the Commission found probable cause to believe that the CDP violated
17 2 U.S.C. § 441b(a) and 11 C.F.R. §§ 102.5(a)(1), 104.10(b)(4), and 106.5(d) when it failed to
18 allocate the costs of voter registration and GOTV activities between its federal and non-federal
19 accounts. In a subsequent district court case brought by the Commission, the court held that the
20 CDP violated the Act and Commission allocation regulations by transferring non-federal funds to
21 an initiative group to conduct voter registration and GOTV activities with knowledge that the
22

group would use the funds to increase the number of Democratic voters.³ *FEC v. California Democratic Party*, No. CIV-S-97-891 GEB PAN (E.D. Calif. 1998). In MUR 3774, the Commission found probable cause to believe that the NRSC failed to allocate payments made to a third party to conduct GOTV drives and issue advocacy. The interpretations of the Act and Commission regulations reflected in these MURs ensure that a party committee cannot do indirectly what it is prohibited from doing directly – that is, use impermissible funds for campaign activity intended, in whole or part, to influence federal elections. See 2 U.S.C. §§ 441a and 441b(a).

C. Analysis

At the time it filed its complaint, the DCCC was aware through press reports that the NRCC had transferred \$500,000 in non-federal funds to the USFN on October 20, 1999. The complaint alleged that the NRCC had done so in order to pay for allocable GOTV and issue advocacy efforts with 100% soft money. The DCCC also alleged, referencing several press reports, that Americans for Economic Growth (“AEG”) had sponsored a series of radio advertisements attacking “...Democratic candidates while bearing a stark similarity to [television] ads” that the NRCC ran in October 1999.

³ But see MUR 4215 (Democratic National Committee) (where the Commission declined to adopt the General Counsel’s recommendations to find probable cause to believe that the Democratic National Committee (“DNC”) violated 2 U.S.C. §§ 441a(f) and 441b and 11 C.F.R. § 106.5(b) when it transferred certain funds to state party committees with the intention that those funds be used for voter drive advertisements and allocated these transfers between its federal and non-federal accounts using the state party committees’ more favorable allocation ratios rather than its own allocation ratio). Two aspects of this matter warrant explanation. First, in finding no probable cause to believe that the DNC violated the Act, the Commission relied, in part, on provisions of the Act and Commission regulations that permit unlimited transfers between a national party committee and an affiliated state party committee. See Statement of Reasons in MUR 4215 dated March 26, 1998, at 4. Second, MUR 4215 involved how payments for the voter drive advertisements should be allocated between federal and non-federal accounts; the need to allocate the payments between accounts in some manner was unquestioned.

1 After the response was submitted the press reported that, based on the 1999 tax return
2 filed by the USFN, it appeared that the USFN had transferred \$300,000 to AEG during that year.
3 Damon Chappie, *AEG Documents Reveal Transfer*, Roll Call, March 8, 2001. Although the
4 USFN's Executive Director, Bob Mills, reportedly denied that the "the \$500,000 NRCC
5 contribution was passed along . . . to AEG," *id.*, it appears that the NRCC's monetary transfer to
6 the USFN, the USFN's \$300,000 transfer to AEG and the series of radio advertisements focusing
7 on the issue of Social Security may be related.

8 Publicly available information indicates that in the fall of 1999 the Republican Party
9 inaugurated a project called "Stop the Raid!"⁴ According to materials issued by the Republican
10 Party, the project was a multi-pronged effort to prevent the President and Congress from
11 financing federal programs in FY2000 out of the Social Security Trust Fund surplus. Stop the
12 Raid! Talking Points, dated September 29, 1999, state, in part that, **"Republicans believe that
13 every working American should know unequivocally that Medicare and Social Security
14 will be there for them when they retire. This spring, the House passed the Social Security and
15 Medicare Safe Deposit Act of 1999 and moved one step closed to making our commitment a
16 reality." (emphasis in original). The Talking Points also asserted that "[A]s we work to
17 complete next year's budget (FY2000), Republicans will not waiver in our efforts to preserve the
18 Social Security Trust Fund for today's and tomorrow's seniors" and "[w]e must stop the
19 President from breaking his promise and stop the current raid on the Social Security Trust
20 Fund." (emphasis in original). <http://hillsource.house.gov/stoptheraid/TalkingPoints.html>.**

⁴ Some of the materials issued by the Republican Party indicate that the project was also called the "*Securing America's Future Project STOP THE RAID! on the Social Security Surplus.*" See <http://hillsource.house.gov/stoptheraid/TalkingPoints.html>.

1 Representative J.C. Watts, the Chairman of the House Republican Conference, who
2 reportedly managed the communications portion of the project, issued a "Dear Colleague" letter
3 on October 19, 1999 in which he stated, "We have won our battle to stop the raid on the Social
4 Security Trust Fund." Jim VandeHei and John Bresnahan, *House Leaders Plan Ad Blitz on*
5 *Budget Strategy*, Roll Call, Sept. 29, 1999, at 1. The letter announced that President Clinton had
6 agreed to meet with congressional leaders to discuss funding the FY 2000 federal budget without
7 using the Social Security Trust Fund and, in closing, urged members of the House Republican
8 Conference to "celebrate the victory with your constituents." See
9 <http://hillsource.gov/DearColleagues/DC106/19991019sshtml>. The press reported that House
10 Republicans "...believed they scored a winner with this issue as they worked to complete the
11 fiscal 2000 federal budget without borrowing from the trust fund. Protecting Social Security
12 against higher-spending Democrats became the Republican theme." Dave Boyer, *GOP's Test Ad*
13 *Takes Aim at Gephardt*, The Washington Times, October 31, 1999, at C4.

14 Publicly available information indicates that, as part of the Stop the Raid! project, House
15 Republicans and the NRCC sponsored a series of television advertisements in a number of
16 Democratic "target districts" relating specifically to the issue of protecting the Social Security
17 surplus. Jim VandeHei and John Bresnahan, *House Leaders Plan Ad Blitz on Budget Strategy*,
18 Roll Call, Sept. 29, 1999, at 1; David Espo, *Social Security Ads Irk Democrats*, AP Online, Nov.
19 3, 1999. According to press reports, the television advertisements were placed in the districts of
20 as many as eight to ten Democrats considered "vulnerable" in the 2000 elections. David Espo,
21 *Social Security Ads Irk Democrats*, AP Online, Nov. 3, 1999; Dave Boyer, *GOP's Test Ad Takes*
22 *Aim at Gephardt*, The Washington Times, October 31, 1999, at C4.

1 Funding for this advertising campaign, which, according to news articles, was in the
2 \$500,000 to the \$1 million range, was reportedly approved at an emergency meeting of the
3 NRCC's executive committee in September of 1999. John Bresnahan and Damon Chappie,
4 *NRCC Kept Members in Dark, Chairman Didn't Get Sign-Off for Contribution*, Roll Call,
5 Dec. 13, 1999. The press also reported that the campaign was controversial in Republican
6 circles, partly because the NRCC used hard money a year ahead of the 2000 elections to fund the
7 advertisements. David Espo, *Social Security Ads Irk Democrats*, AP Online, Nov. 3, 1999.
8 Once launched, the advertising campaign apparently ran into problems in certain districts. For
9 example, Democratic Representatives Chet Edwards (TX) and Dennis Moore (KS) reportedly
10 convinced local stations to stop running the advertisements on the basis that they were factually
11 inaccurate.⁵ Greg Hitt, *Republican Had Questions About Groups Tied to DeLay*, The Wall Street
12 Journal, June 1, 2000.

13 On October 20, 1999, the NRCC donated \$500,000 in non-federal monies to a non-profit
14 organization, the USFN. See NRCC 1999 November FEC Disclosure Report. Press reports
15 indicate that Ed Buckham, who was then operating a fundraising and consulting firm called the
16 Alexander Strategy Group, solicited this \$500,000 donation at about the same time as the
17 NRCC's Social Security advertisement campaign was running into the aforementioned

⁵ Press reports indicate that subsequent to this advertising campaign, the NRCC produced and presented to a focus group a similar television spot highlighting House Majority Leader Richard A. Gephardt and public statements he made regarding the necessity of using part of the Social Security surplus to cover the federal budget. The press reported that the NRCC considered running the television advertisement in the home districts of several Democratic leaders, including Mr. Gephardt's district in Missouri. It is not known whether the NRCC ever distributed this particular advertisement. Dave Boyer, *GOP's Test Ad Takes Aim at Gephardt*, The Washington Times, October 31, 1999, at C4.

1 roadblocks.⁶ Jim VandeHei, *NRCC's \$500,000 Donation Linked to DeLay Advisers*, Roll Call,
2 December 6, 1999; Greg Hitt, *Republican Had Questions About Groups Tied to DeLay*, The
3 Wall Street Journal, June 1, 2000.

4 Representative Tom Davis, the NRCC Chairman, reportedly stated that he was
5 “surprised” by the USFN’s transfer of funds to AEG. Damon Chappie, *AEG Documents Reveal*
6 *Transfer*, Roll Call, Mar. 8, 2001. However, the press has reported that Ed Buckham, who
7 solicited these funds on behalf of the USFN, had “approached party [NRCC] officials with a plan
8 to open what amounted to a second front of [social security] ads.” Greg Hitt, *Republican Had*
9 *Questions About Groups Tied to DeLay*, The Wall Street Journal, June 1, 2000, at A24. Publicly
10 available information indicates that within a few weeks of the NRCC transferring the \$500,000
11 to the USFN, the aforementioned AEG-sponsored advertisements began running in the districts
12 of four “vulnerable Democrats”: Representative Rush Holt (NJ); Representative Shelley Berkley
13 (NV); Representative Dennis Moore (KS); and Representative Ken Lucas (KY).⁷ Greg Hitt,
14 *Group with DeLay Ties Pays for Ads Pressing Democrats on Social Security*, The Wall Street
15 Journal, Nov. 4, 1999, at A32. The press described these four first-term Democrats as among the
16 “GOP’s top targets for defeat as Republicans fight to preserve the party’s slim five-seat majority

⁶ During the relevant time period, there were reportedly additional connections between Mr. Buckham and the USFN. Press reports indicate that the Alexander Strategy Group was leasing space for \$3,000 a month in a townhouse owned by the USFN. Peter H. Stone, *Campaign Circuit for April 22, 2000*, National Journal, April 22, 2000; Damon Chappie, *Tax Returns Shed Light on U.S. Family Network Skybox, Truck, Townhouse are Among Expenditures*, Roll Call, April 3, 2000. Reportedly, Wendy Buckham, who is married to Ed Buckham, served as the USFN’s treasurer for several years. Damon Chappie, *U.S. Family Network Faces More Scrutiny*, Roll Call, April 6, 2000. Records also reportedly showed that a 1997 truck owned by the USFN was registered at the Buckhams’ Maryland residence. *Id.*

⁷ The NRCC’s Social Security advertisement also reportedly ran in Representative Berkley’s district. Greg Hitt, *Group with DeLay Ties Pays for Ads Pressing Democrats on Social Security*, The Wall Street Journal, Nov. 4, 1999, at A32.

1 in the House.” *Id.* The AEG radio advertisements, which the press stated were “among the first
2 independently funded political messages of the 2000 election,” reportedly asserted that “liberals
3 in [C]ongress” were “poised to raid the retirement program” and urged listeners to call “our
4 congressman” and tell them “to stop the raid.” Greg Hitt, *Group with DeLay Ties Pays for Ads*
5 *Pressing Democrats on Social Security*, The Wall Street Journal, Nov. 4, 1999, at A32; Damon
6 Chappie, *AEG Documents Reveal Transfer*, Roll Call, March 8, 2001. Press reports noted that
7 there were similarities between these AEG radio advertisements and the television
8 advertisements sponsored by the NRCC.⁸ Greg Hitt, *Group with DeLay Ties Pays for Ads*
9 *Pressing Democrats on Social Security*, The Wall Street Journal, Nov. 4, 1999, at A32; Jim
10 VandeHei and Greg Hitt, *Democrats Sue GOP’s DeLay, Claim He ‘Extorted’ Donations*, The
11 Wall Street Journal, May 4, 2000, at A28; Greg Hitt, *Republican Had Questions About Groups*
12 *Tied to DeLay*, The Wall Street Journal, June 1, 2000, at A24.

13 Had the NRCC sponsored these radio advertisements on its own it would have had to
14 allocate the cost because, despite the focus on select Democratic congressmen, these
15 advertisements appear to focus on national legislative activity and to promote the Republican
16 agenda on Social Security. Even though the available information seems to indicate that the
17 AEG advertisements do not mention an election or contain express advocacy, they could have the
18 effect of influencing the public’s positive view of the Republicans on this issue and perhaps
19 enhance the national party committee’s related objective of putting more Republicans in office
20 during the next election cycle. See AO 1995-25 and MUR 4538 (Alabama Republican Party)

⁸ The press reports do not specify how the AEG advertisements and the NRCC advertisements resembled each other.

1 (the Commission found that “so-called party issue ads” impacted both federal and non-federal
2 elections, and are therefore allocable expenses.)

3 The proposed transfer of funds to the USFN reportedly ran into opposition at the NRCC.
4 Scott Hatch, who was then serving as the NRCC’s Executive Director, reportedly had such
5 “strong opposition” to it that he twice turned down Mr. Buckham’s request for the funds in early
6 October 1999. Greg Hitt, *Republican Had Questions About Groups Tied to DeLay*, The Wall
7 Street Journal, June 1, 2000, at A24. Mr. Hatch reportedly stated, “On the advice of legal
8 counsel, I informed the chairman that I would not authorize the contribution, and if he chose to
9 do so, it would be over my explicit objection.”⁹ Damon Chappie, *AEG Documents Reveal*
10 *Transfer*, Roll Call, Mar. 8, 2001. News reports state that the NRCC’s Chairman, Representative
11 Tom Davis, did not seek the approval of the 36-member executive committee prior to donating
12 the money, although at least some NRCC members were reportedly notified informally of the
13 pending transfer. John Bresnahan and Damon Chappie, *NRCC Kept Members in Dark*, Roll
14 Call, Dec. 13, 1999.

15 Press reports indicate that the NRCC’s 1999 donation to the USFN may also have been
16 related to other contemporaneous concerns. Reportedly, in previous elections, the Christian
17 Coalition had been an “integral” part of the Republican Party’s grassroots effort but, by the late
18 1990s, had suffered a loss of leadership and was having serious financial difficulties. Juliet
19 Eilperin, *House Republicans Seek Wider Grass-roots Support: GOP Scrambles to Replace*

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⁹ According to one news article, Scott Hatch, as Executive Director of the NRCC, was concerned about whether a donation to the USFN would somehow conflict with FEC rules on political party transfers to outside groups. The article links Mr. Hatch’s decision against the transfer to the October ruling in *California Democratic Party*, which required that such party contributions be a mix of hard and soft money. Greg Hitt, *Republican Had Questions About Groups Tied to DeLay*, The Wall Street Journal, June 1, 2000, at A24.

1 *Faltering Christian Coalition*, The New Orleans Times-Picayune, Dec. 15, 1999, at A5. House
2 leaders reportedly donated to other grassroots organizations in advance of the 2000 elections
3 because the Christian Coalition might no longer be able to mobilize Republican voters sufficient
4 to preserve the Republican majority. *Id.*; Peter H. Stone, *Campaign Circuit For April 22, 2000*,
5 National Journal, April 22, 2000.

6 That the NRCC may have viewed groups like the USFN as filling the Christian
7 Coalition's former role is supported by statements reportedly made by Dan Mattoon, who was
8 appointed the NRCC's Deputy Chairman shortly after the donation to the USFN.¹⁰ Mr. Mattoon
9 reportedly stated, "There's going to be a need to fill a vacuum here. There is a need to build a
10 coalition to elect Republican candidates." Juliet Eilperin, *House Republicans Seek Wider Grass-*
11 *roots Support: GOP Scrambles to Replace Faltering Christian Coalition*, The New Orleans
12 Times-Picayune, Dec. 15, 1999, at A5. Mr. Mattoon also reportedly stated, "In 1996 and 1998,
13 we [the NRCC] were disappointed and frustrated that the conservative base was not energized to
14 turn out [voters] for our candidates. So we thought that in 1999 that it made sense that we help
15 these groups." Jim VandeHei, *NRCC's \$500,000 Donation Linked to DeLay Advisers*, Roll Call,
16 Dec. 6, 1999, at 1. Reportedly, Mr. Mattoon also stated, "The [USFN] is a group that based on
17 our view of Ed Buckham's strengths in the family community and his political strengths will
18 have an equally important impact in the elections, favorably for Republicans." *Id.* As the

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¹⁰ Although one news article stated that Mr. Mattoon was "named to replace" Mr. Hatch in mid-October 1999, another stated that he had been "tapped" for the role on Nov. 15, 1999. Prior to his appointment at the NRCC, Mr. Mattoon was a lobbyist for Bell South. Congressional Daily/AM, Jan. 31, 2001. Mr. Mattoon left the NRCC in December 2000 and returned to Bell South. In February of 2001, he left Bell South to join a lobbying firm. David Espo, *Chaffee's Death Opens Assignment*, AP/Online, 10/29/99; Mike Dorning, *GOP's New Money Man Has Ties to Hastert*, Chicago Tribune, Oct. 31, 1999, at 2; Damon Chappie, Amy Keller, John Bresnahan, *Morning Business*, Roll Call, Feb. 1, 2001.

1 recently appointed Deputy Chairman for the NRCC, Mr. Mattoon may have gathered information
2 about the donation and its purpose in order to respond to press inquiries. NRCC Chairman Tom
3 Davis reportedly stated that he did not "know what U.S. Family did with their money," but that
4 he understood that the group intended to use the money for a grassroots program. Damon
5 Chappie, *AEG Documents Reveal Transfer*, Roll Call, Mar. 8, 2001.

6 The NRCC's response to the complaint sheds little light on the circumstances
7 surrounding the transfer. The NRCC response contained no information regarding the events
8 leading up to the NRCC's donation of \$500,000 to the USFN, nor did it reference any internal or
9 external communications, not even the reported solicitation by Ed Buckham cited in the
10 complaint. Although the NRCC's response stressed that it had no control over how the USFN
11 would spend the funds, the key issue is not control but rather knowledge concerning the use of
12 the funds. See MUR 3774 (NRSC) (the Commission found probable cause to believe that the
13 NRSC violated the allocation requirements when the NRSC made payments to a third party with
14 the knowledge that the payments would be used to fund GOTV drives and issue advocacy).
15 According to its response, the NRCC believed the funds would be used in a manner consistent
16 with the materials provided by the USFN and not for any electioneering purposes. The NRCC
17 did not cite to any specific part of the USFN materials and did not state whether it knew what the
18 USFN ultimately did with the funds. The USFN's mission statement recited that it used "a
19 combination of education, advocacy and grassroots organization" to achieve its goals. The
20 knowledge that the USFN engaged in these activities, coupled with the reported statements of
21 Mr. Hatch, Mr. Mattoon, and Representative Davis, supports an inference that the NRCC knew
22 that the USFN intended to use some or all of the funds to engage in allocable GOTV projects and

1 education advocacy.

2 Moreover, the statements reportedly attributed to Bob Mills, and relied upon by the
3 NRCC, that the USFN would use the funds to lobby GOP leaders and members to support a pro-
4 family bill of rights and possibly for radio advertisements or mass mailings, warrant additional
5 scrutiny. 12/6/99 *Roll Call* article. In addition to the fact that the USFN reportedly was not
6 registered to lobby at that time,¹¹ press reports indicate that the USFN did not engage in large-
7 scale issue advocacy. Damon Chappie, *Tax Returns Shed Light on U.S. Family Network Skybox,*
8 *Truck, Townhouse are Among Expenditures*, *Roll Call*, April 3, 2001. By the time Mr. Mills
9 reportedly made the statements, it appears that the USFN may have already transferred \$300,000
10 to AEG. Tax records reportedly show that in 1998, the USFN had contributions totaling \$1.3
11 million from five sources and assets that included a townhouse, a truck, and a 15-year lease on
12 skybox tickets. *Id.* In 1998, the USFN reportedly expended \$665,863, with 60% going towards
13 fundraising and consulting. *Id.* According to the same press account, only \$91,000 was spent in
14 1998 on education and advertisements, which is characterized as being low for a group that
15 supposedly focuses on "grass-roots style advocacy." *Id.* Reportedly, the USFN had only
16 relatively "modest" expenses for salaries, postage, and telephone service, which are typically a
17 large part of the average advocacy group's budget. *Id.* The USFN reportedly started 1999 with
18 \$700,000 in the bank. *Id.*

19 The timing and manner in which \$500,000 in non-federal funds reportedly moved from
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¹¹ According to press reports, the USFN was not registered to lobby with the House and Senate disclosure offices until sometime in February of 2000. Damon Chappie, *Tax Returns Shed Light on U.S. Family Network Skybox, Truck, Townhouse are Among Expenditures*, *Roll Call*, April 3, 2000. When the USFN registered to lobby it was reportedly on such issues as tobacco regulation, ballistic missile defense, and estate taxes. Peter H. Stone, *Campaign Circuit for April 22, 2000*, *National Journal*, April 22, 2000.

1 the NRCC to the USFN and the \$300,000 reportedly moved from the USFN to AEG, as well as
2 the temporal proximity and reported similarities in the NRCC and AEG advertisement
3 campaigns, suggest that these activities may have been connected at the time of the donation to
4 the USFN. Additional questions about possible connections and the NRCC's knowledge of them
5 arise from the reports that Ed Buckham, who was soliciting funds for the USFN, approached the
6 NRCC with a plan to open up a "second front" of Social Security advertisements, the refusals of
7 the NRCC's Executive Director, reportedly based on advice of counsel, to authorize the donation
8 to the USFN, and indications that the USFN might not have had the in-house capabilities or
9 experience necessary to mount a well-financed issue advocacy campaign.

10 If the NRCC gave non-federal funds to the USFN with the knowledge that the USFN or
11 another organization would use the money for allocable activities, then the NRCC may have
12 violated 2 U.S.C. §§ 441a(f) and 441b by using excessive and prohibited funds to finance federal
13 election activity, 11 C.F.R. §§ 102.5(a)(1)(i) and 106.5(g)(1)(i) by failing to make the payments
14 from its federal account, and 11 C.F.R. § 106.5(c) by failing to allocate its payments for joint
15 federal and non-federal activities between its federal and non-federal accounts. *See* MUR 3670
16 (CDP) and MUR 3774 (NRSC). Had the NRCC itself sponsored issue advertisements and
17 conducted other allocable activities, it would have had to finance, at a minimum, 65% of the
18 costs of those activities with federal funds. *See* 11 C.F.R. § 106.5(c)(2).

19 Therefore, there is reason to believe that the National Republican Congressional
20 Committee and Christopher J. Ward, as treasurer, violated 2 U.S.C. §§ 441a(f) and 441b, and
21 11 C.F.R. §§ 102.5(a)(1)(i), 106.5(c), and 106.5(g)(1)(i).